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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. QUENTIN RAY BEALER, Defendant and Appellant.	C083033 (Super. Ct. No. NCR86297)

After a change of venue to Sacramento County, a jury found defendant Quentin Ray Bealer guilty of the first degree murder in 2013 of a 14-year-old high school student in Red Bluff. The trial court, sitting in Tehama County, sentenced defendant to state prison for an indeterminate life term. Defendant appealed in September 2016; his briefing was complete in July 2018 upon his failure to file a reply brief.

Defendant contends the trial court erroneously allowed the introduction of character evidence regarding his sexual conduct with a former girlfriend that indicated a predilection for a girl in her teens, and contests the sufficiency of the evidence to support

the various theories of first degree murder on which the trial court instructed the jury. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties thoroughly summarize all the evidence adduced at trial. We, however, are concerned only with substantial evidence that supports the judgment (*People v. Mack* (1992) 11 Cal.App.4th 1466, 1468), and in that regard we need to examine only evidence in support of one theory of guilt on which the trial court properly instructed the jury (*People v. Guiton* (1993) 4 Cal.4th 1116, 1130). Our account is accordingly narrower than that of the parties, focused on defendant's guilt of premeditated murder.

The victim was taking an alternative educational outreach program about a block from Red Bluff High School (which she had attended the previous fall). She was 14 years old and in the ninth grade. Her mother dropped her off on a February morning at the high school in 2013 before 10:00 a.m. for a meeting with her teachers at the program that usually lasted about an hour. After the meeting, she had an hour until she could go to lunch on the high school campus with her friends before an afternoon band class that she still attended on campus. She could either stay in the campus library or walk home (about 12 minutes away).

A few girls who were on a walk with their gym teacher as part of gym class were crossing a creek that bordered the south side of the high school's football field, returning from a trek to a nearby elementary school. The gym class was scheduled from 10:23 to 11:22 a.m. They crossed paths with the victim on the south side of the creek, with whom they made eye contact, as she was walking to the west a few feet behind a man wearing a jacket with its hood over his head (so they could not see him clearly). The two were about nine feet away from the girls. They noticed the man look over his shoulder in the victim's general direction.

The gym teacher first noticed the man ahead of the victim, facing her. The teacher did not recognize him (although, as it turned out, he had coached defendant in the early 1990's). When he looked back, the man and the victim were both facing the same direction as they walked away.

There was testimony about various surveillance videos. One showed defendant on a street near the high school at 8:30 a.m. Another showed the victim walking onto the campus at 11:00 a.m., and then heading south through the student parking lot. Almost simultaneously, defendant is seen in a video entering the campus through the parking lot.[1]

When the victim did not return home, her mother contacted the police. Two days later, as the police were searching the creek, they were drawn to a location over which vultures were circling. They found the victim's body inside a foam mattress pad in a dark area of dense shrubbery and undergrowth. Given the focus of our analysis, we need note only that her camisole was wrapped twice around her neck and knotted in the back. Her clothing was disarrayed, exposing her right breast. A coroner who examined the body at the scene believed she had been dead for 24 to 30 hours.

An etymologist testified that the victim had been dead for 30 to 40 hours, based on evidence of insect activity on her body. A pathologist testified that the victim had been conscious at the time the camisole was knotted around her neck by someone who was significantly stronger, and that it would have taken five to six minutes of consistent pressure to cause her death from strangulation.

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[1] Defendant conceded he was the man in the 11:00 a.m. video, and two of the girls in the gym class and the gym teacher all identified the man in the videos as the man on the creek trail.

A DNA criminalist testified that there was a male contributor to samples that she retrieved from the camisole, mixed with the victim's without any other contributors. She concluded from her analysis that defendant's DNA was consistent with the sample and therefore could not be excluded as a contributor. Moreover, given the extremely microscopic odds of someone having the DNA profile in the sample, she believed this was strong evidence that defendant was in fact the male contributor to the sample. The same was true of a bloodstain and other swabs not involving blood, including those from the victim's left index finger.[2]

In three interviews with the police, defendant denied ever encountering the victim. In the first, he admitted walking through the school campus on the day of the murder and crossing the creek, on a day when he was "fucked up" on drugs. Based on his demeanor, he was arrested a few hours after this interview for being under the influence of a controlled substance. In the evening of the same day, investigators spoke with him again. This time, they confronted defendant with information that witnesses had seen him in the company of the victim, but he stuck to his denial. A couple of days later, investigators spoke with him again. Defendant was adamant about never seeing the victim, even when confronted with a sham report asserting (presciently) that his DNA connected him with the homicide. During this interview, he also asserted that he did not give cigarettes to minors and probably did not have any cigarettes with him on the day of the homicide because he did not smoke them when using methamphetamine. At trial, he admitted encountering the victim at the creek, where she asked him for a cigarette. He threw her

[2] A swab of the victim's right thumb tip contained a small amount of DNA from a minor male contributor but "due to limited genetic information" it was determined to be inconclusive.

his pack. She then asked for a light, and he handed her his lit cigarette.[3] He walked off without any further engagement with her. He acknowledged that he was well familiar with the creek vicinity, having grown up in that area. A defense expert asserted that defendant's DNA could have been transferred to the victim and her clothing from the lit cigarette he had given her.

DISCUSSION

1.0 The Trial Court Properly Admitted Evidence of Sexual Proclivity

Before trial, the prosecutor moved to admit evidence of defendant's prior conduct pursuant to Evidence Code sections 1101 and 1108. As is pertinent here, the prosecutor asserted that during defendant's relationship with a 36-year-old woman in 2012, he asked her to " 'role play' " when he had taken methamphetamine before a sexual encounter. He wanted her to act like a 16-year-old girl. He would put his arm around her neck from behind, and tied her up tightly to a chair with pantyhose. He would also watch pornography involving young girls when he was unable to achieve an erection.

The trial court considered this motion in the course of a pretrial hearing in April 2016. The former girlfriend testified that she had dated defendant for seven months (living with him for a couple of months at his parents' home). The relationship ended in November 2012. In watching pornography on his phone, he seemed to favor young women (of legal age) and domination. She said that on one occasion when they were at a cheap motel in Red Bluff he wanted her to pretend that she was 16. However, they both fell asleep without engaging in sexual activity. On another occasion at a motel in Corning, she allowed defendant to tie her to a chair with her nylons. Finding the bonds too tight, she asked him to remove them, and he did. Defendant also claimed to have had

[3] The victim's parents and best friend testified that she hated cigarettes, and considered smoking "gross."

sex with her 16-year-old son in an effort to rile her up before sex (she later confirmed with her son that this did not happen). She allowed defendant to dominate her during sex, including putting his arm around her neck from behind. After the relationship ended, he sent her a photograph of a young girl (perhaps in her 20's) engaged in fellatio; she sent a text in response that it was disgusting because the girl looked the same age as defendant's underage daughter; she said that to get him to stop texting her.

Excluding the remainder of the evidence of sexual proclivity (which went beyond what we have summarized above), the trial court ruled that the role-playing incident was admissible as evidence of intent relevant to the nature of defendant's encounter with the victim under the theory of the prosecution that defendant had killed the victim in the course of molesting her (based on the condition of her body when found). It did not find the evidence to be more prejudicial than probative because it was not more inflammatory than the facts surrounding the killing itself, it was not remote, it did not raise any concern that the jury might punish him for an uncharged crime, and it would not involve significant effort on the part of the jury to determine its truth because the facts were straightforward and the witness was credible in the court's opinion (her testimony at the hearing being in accord with a prior statement to the police). The witness then testified at trial solely about the request for role-playing and nothing further. The trial court ultimately instructed the jury that the prosecutor had the burden of proving this point by a preponderance of the evidence, and that the jury was limited to considering it solely for the purpose of whether defendant's actions with the victim were for the *intent* of his sexual gratification.

Defendant suggests the evidence was unnecessary because the prosecutor thought evidence of intent was undisputed. He does not provide any authority for the proposition that this made the evidence inadmissible. Defendant argues this evidence was too dissimilar to be relevant to intent because his girlfriend was an adult. We may dismiss

this claim out of hand; there need not be similar *conduct* for an inference of intent to arise. (E.g., *People v. Memro* (1995) 11 Cal.4th 786, 864-865 [possession of *photographs* from which jury could infer sexual interest in underage men admissible on issue of intent to molest murder victim].) If defendant found it arousing for his adult girlfriend to *pretend* to be a teen, there is a rational inference to be drawn that he found teenagers themselves to be sexually desirable, and therefore had molested the victim before her death for purposes of sexual gratification (in support of the prosecution's theory of felony murder).

He also argues without any authority that there was an "extremely high" risk that the jury would use this evidence as proof of identity, because "it would have been impossible for the jury" not to have done so. He does not address the presumption that jurors heed limiting instructions, an essential premise of the system of trial by jury—otherwise there would not be any point in giving instructions. (*Francis v. Franklin* (1985) 471 U.S. 307, 324, fn. 9 [85 L.Ed.2d 344]; *Marshall v. Lonberger* (1983) 459 U.S. 422, 438, fn. 6 [74 L.Ed.2d 646]; *People v. Ervine* (2009) 47 Cal.4th 745, 776.) Not having given us any basis for overcoming this presumption, defendant's claim does not merit any further consideration.

Defendant asserts ipse dixit that the trial court abused its discretion in admitting this evidence. As we have summarized above, the trial court provided a lengthy explanation of why the probative value of this specific item of propensity (as opposed to the larger palette that the prosecutor sought to admit) was more probative than prejudicial. Defendant does not make any effort to engage the trial court's reasoning. We therefore deem this suggested argument to be forfeited for want of cogent analysis establishing an abuse of discretion. (*Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 591, fn. 8; *Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230.)

Finally, defendant makes a one-paragraph assertion that this "error" in admitting the evidence was prejudicial with respect to the theory of murder *in the course of the molestation of the victim*. In the first place, this is not the theory that we affirm on appeal. In the second place, defendant does not even begin to address the evidence that otherwise supports the judgment against him, including the eyewitness accounts and the videotapes putting him in proximity with the victim shortly before she disappeared, and the DNA evidence tying him to her body (not to mention his patently false accounts in statements to investigators and at trial). We thus reject his argument.

2.0 There Is Sufficient Evidence of Premeditation

In framing his argument, defendant raises the banner of the triptych set out in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27, for assessing the sufficiency of evidence at trial of premeditation: planning, motive, and manner. As we and numerous other courts point out repeatedly, this is simply *a* framework for analysis, and is neither intended to establish a sine qua non for premeditation nor preclude the reliance on evidence from which a jury can otherwise clearly infer premeditation. (*People v. Gunder* (2007) 151 Cal.App.4th 412, 420.) As a result, "[w]e therefore consider his argument without belaboring the[se] bullet points . . . ." (*Ibid*.)

Defendant essentially asserts there is an absence of any evidence of planning or prior motive. This is, as just noted, irrelevant. He also contends that strangulation does not prove anything more than a "mere" intent to kill. While he cites a number of cases in which strangulation was considered insufficient evidence to support premeditation, there is little value in comparing the facts here with the facts of other cases. (*People v. Casares* (2016) 62 Cal.4th 808, 828; *People v. Rundle* (2008) 43 Cal.4th 76, 137-138 ["Reviewing the sufficiency of evidence . . . necessarily calls for analysis of the unique facts and inferences present in each case, and therefore comparisons between cases are of little value."].) The Supreme Court has stated that strangulation to the point of death is by its nature a deliberate

act, the prolonged nature of which affords ample time to consider its deadly nature and which as a result allows for a *rational* (if not compelled) inference of premeditation. (*People v. Stitely* (2005) 35 Cal.4th 514, 544; *People v. Bonillas* (1989) 48 Cal.3d 757, 792-793; see *People v. Hovarter* (2008) 44 Cal.4th 983, 1020.)

Therefore, we find the manner of death of itself more than sufficient to support a rational inference of premeditated murder. Given this conclusion, we do not need to address defendant's contentions that insufficient evidence supports the remaining theories of murder in the first degree.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

RAYE, P. J.

MAURO, J.